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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/716,586

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Gordon K. Dennis

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EXAMINER

GALL, LLOYD A

ART UNIT

PAPER NUMBER

3673

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/716,586	Applicant(s) DENNIS, GORDON K.	
	Examiner Lloyd A. Gall	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The drawings filed on December 9, 2009 are objected to, as introducing new matter into the application. All changes made in the drawings relative to the originally filed drawing set of November 19, 2003, must be explained in detail, as set forth in 37 CFR 1.121(d). Also, as set forth in 37 CFR 1.121(f), no new matter may be entered into the application.

With respect to the following prior art rejections, claims 9 and 16 are regarded as positively claiming the access door. Independent claims 1 and 2 are regarded as not positively claiming the access door. The access door is only inferentially claimed in independent claims 1 and 2. This is confirmed by applicant on page 8, line 3 of the REMARKS filed on December 9, 2009.

Claims 1-8 are currently assumed to be not positively claiming a locking device or a single hasp element.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Plifka (827). Plifka teaches a channel shaped protective shroud 28 to cover at least a portion of a locking device 36, the shroud having openings at both ends, means 10, 12 to affix the shroud in place over the locking device, and a single hasp 4 having a notch 26 to

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receive the locking device 36. The shroud 28 is appropriately sized to prevent the locking device (padlock) from disengaging from the notch 26 in the locking condition.

As set forth above, an access door is not being positively claimed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plifka in view of Garvey et al and Hillabush.

Garvey teaches a shroud of approximately one quarter inch thick material as set forth in column 4, line 45. Hillabush teaches stainless steel used for shroud 100 and a hasp 200 (column 4, line 15). It would have been obvious to one of ordinary skill in the art to form the shroud of Plifka of one quarter inch stainless steel, in view of the teachings of Garvey and Hillabush, to provide corrosion resistance.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plifka in view of Masoncup et al.

Plifka teaches the padlock shackle and at least a portion of the body of the padlock as being covered by the shroud as seen in fig. 3. Masoncup teaches a shackle 16 which may pivot about the leg 15. It would have been obvious to substitute a padlock with a pivoting shackle for the padlock of Plifka, in view of the teaching of Masoncup, since any well known type of padlock would function just as well in locking the hasp of Plifka. It is also noted that the locking device is not being positively claimed in claims 7 and 8.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Plifka or Knaack et al.

Hoffman teaches a channel shaped protective shroud 54, 56, 58 to cover a locking device 50, the shroud having openings at both ends (column 5, line 41), weld means or any other suitable means (column 4, lines 21-22) to affix the shroud in place over the locking device, and a single hasp 30. Plifka teaches a hasp element notch 26 to engage the padlock within a shroud 28, as does Knaack teach a hasp notch 61 to engage a padlock within a shroud 35. It would have been obvious to substitute a notch for the opening 46 of Hoffman, and to appropriately size the shroud of Hoffman such that the padlock will not be disengaged from the notch in the locking condition, in view of the teaching of either Plifka or Knaack et al, to provide expected locking results. As set forth above, an access door is not being positively claimed.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Plifka or Knaack et al as applied to claim 1 above, and further in view of Garvey et al and Hillabush.

Garvey teaches a shroud of approximately one quarter inch thick material as set forth in column 4, line 45. Hillabush teaches stainless steel used for shroud 100 and a hasp 200 (column 4, line 15). It would have been obvious to one of ordinary skill in the art to form the shroud of Hoffman of one quarter inch stainless steel, in view of the teachings of Garvey and Hillabush, to provide corrosion resistance.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Plifka or Knaack et al as applied to claim 1 above, and further in view of Masoncup et al.

Masoncup teaches a shackle 16 which may pivot about the leg 15. It would have been obvious to substitute a padlock with a pivoting shackle for the padlock of Hoffman, in view of the teaching of Masoncup, since any well known type of padlock would function just as well in locking the hasp of Hoffman. It is also noted that the locking device is not being positively claimed in claims 7 and 8.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Garvey et al and either Plifka or Knaack et al.

Hoffman teaches a channel shaped protective shroud 54, 56, 58 to cover a locking device 50, the shroud having openings at both ends (column 5, line 41), weld means or any other suitable means (column 4, lines 21-22) to affix the shroud in place over the locking device, and a single hasp 30. Garvey teaches a plurality of anchors 66 and means 69 to affix the anchors 66. Plifka teaches a hasp element notch 26 to engage the padlock within a shroud 28, as does Knaack teach a hasp notch 61 to engage a padlock within a shroud 35. It would have been obvious to substitute anchors and nuts for the weld of Hoffman, in view of the teaching of Garvey, since Hoffman teaches in column 4, lines 21-22 that any well known suitable means may be used in place of the weld. It would have been obvious to substitute a notch for the opening 46 of Hoffman, and to appropriately size the shroud of Hoffman such that the padlock will not be disengaged from the notch in the locking condition, in view of the teaching of either

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Plifka or Knaack et al, to provide expected locking results. As noted above, an access door is not being positively claimed.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Garvey et al and either Plifka or Knaack et al as applied to claim 2 above, and further in view of Oliver.

Oliver teaches screws 32 welded at 35 to a plate 22. It would have been obvious to weld the screws of Hoffman as modified by Garvey to the shroud, in view of the teaching of Oliver, to provide expected results.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Garvey et al and either Plifka or Knaack et al as applied to claim 2 above, and further in view of Oliver and Braxter.

Oliver teaches screws 32 welded at 35 to a plate 22. Braxter teaches that epoxy is a well known substitute for a weld as set forth in column 4, line 49. It would have been obvious to attach the screws of Hoffman as modified by Garvey to the shroud with an epoxy, in view of the respective teachings of Oliver and Braxter, to provide expected results.

Claims 1, 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner and Plifka.

White teaches an access door 2, a hasp attached to the container 1 interior by the inner side of the rivet 6, an aperture 8 in the door to receive the hasp, and a lock 13 to receive the hasp when the door is closed. Garner teaches a shroud 10 on a door to cover a locking device 40, welding means (column 2, line 43) to affix the shroud in place, and a

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hasp element 30. Plifka teaches a channel shaped shroud with openings at its ends, as set forth above, and a notch 26 to engage the padlock shackle. It would have been obvious to provide a shroud on the door 2 of White to receive the hasp and padlock, in view of the teaching of Garner, to protect the padlock and its shackle from tampering/cutting tools. It would have been obvious to provide a channel shaped shroud with openings at its ends for the shroud of White as modified by Garner, and to substitute a notch for the padlock engaging opening 14 of White, in view of the teaching of Plifka, to provide expected locking results. With respect to claim 16, the sequence of steps are regarded as being inherent in the combination of the references.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner and Plifka as applied to claim 1 above, and further in view of Garvey et al and Hillabush.

Garvey teaches a shroud of approximately one quarter inch thick material as set forth in column 4, line 45. Hillabush teaches stainless steel used for shroud 100 and a hasp 200 (column 4, line 15). It would have been obvious to one of ordinary skill in the art to form the shroud of White as modified by Garner and Plifka of one quarter inch stainless steel, in view of the teachings of Garvey and Hillabush, to provide corrosion resistance.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner and Plifka as applied to claim 1 above, and further in view of Masoncup et al.

Masoncup teaches a shackle 16 which may pivot about the leg 15. It would have been obvious to substitute a padlock with a pivoting shackle for the padlock of White, in view

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of the teaching of Masoncup, since any well known type of padlock would function just as well in locking the hasp of White.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner and Plifka as applied to claim 9 above, and further in view of Hillabush and Garvey et al.

Hillabush teaches a shroud 100 and a hasp 200 formed of stainless steel (column 4, line 15). Garvey teaches a shroud of quarter inch thick material, as set forth above. It would have been obvious to form the shroud and hasp of White as modified by Garner and Plifka of quarter inch stainless steel, in view of the respective teachings of Hillabush and Garvey, to provide corrosion resistance of the shroud and hasp.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner and Plifka as applied to claim 9 above, and further in view of Masoncup et al.

Masoncup teaches a padlock with a pivoting shackle. It would have been obvious to substitute a padlock with a pivoting shackle for the padlock of White, in view of the teaching of Masoncup, since any well known type of padlock would function just as well in engaging the hasp of White.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner, Plifka and Masoncup et al as applied to claim 12 above, and further in view of Hoffman.

Hoffman teaches the entire padlock covered by the shroud as seen in figure 5. It would have been obvious to cover the entire padlock of White with its shroud as modified by

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Garner and Plifka, in view of the teaching of Hoffman, to protect the entire padlock from the elements and from cutting/tampering tools.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner, Plifka and Garvey et al.

White teaches an access door 2, a hasp attached to the container 1 interior by the inner side of the rivet 6, an aperture 8 in the door to receive the hasp, and a lock 13 to receive the hasp when the door is closed. Garner teaches a shroud 10 on a door to cover a locking device 40, welding means (column 2, line 43) to affix the shroud in place, and a hasp element 30. Plifka teaches a channel shaped shroud with openings at its ends, as set forth above, and a notch 26 to engage the padlock shackle. Garvey teaches a plurality of anchors 66 and means 69 to affix the anchors 66. It would have been obvious to provide a shroud on the door 2 of White to receive the hasp and padlock, in view of the teaching of Garner, to protect the padlock and its shackle from tampering/cutting tools. It would have been obvious to provide a channel shaped shroud with openings at its ends for the shroud of White as modified by Garner, and to substitute a notch for the padlock engaging opening 14 of White, in view of the teaching of Plifka, to provide expected locking results. It would have been obvious to provide anchors and nuts for the weld of White as modified by Garner, in view of the teaching of Garvey, to provide expected attaching results.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of White in view of Garner, Plifka and Garvey et al as applied to claim 2 above, and further in view of Oliver.

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Oliver teaches screws 32 welded at 35 to a plate 22. It would have been obvious to weld the screws of White as modified by Garvey to the shroud, in view of the teaching of Oliver, to provide expected results.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner, Plifka and Garvey et al as applied to claim 2 above, and further in view of Oliver and Braxter.

Oliver teaches screws 32 welded at 35 to a plate 22. Braxter teaches that epoxy is a well known substitute for a weld as set forth in column 4, line 49. It would have been obvious to attach the screws of White as modified by Garvey to the shroud with an epoxy, in view of the respective teachings of Oliver and Braxter, to provide expected results.

Applicant's arguments filed December 9, 2009 have been fully considered but they are not persuasive.

In response to the remarks on page 6, lines 4-7, applicant is required to explain the changes made in the drawings filed on December 9, 2009, as compared to the originally filed set of drawings, and clarify why these changes do not introduce new matter, as set forth in 37 CFR 1.121 (d) and (f).

In response to the Remarks on page 7, line 18, "the "must be used" argument is not clear. The claims are article claims, and not method of use claims. Further, the Plifka, Hoffman and White references all teach and use a locking device.

In response to the remarks on page 7, the last line and page 8, line 1, the claiming of the locking device and access cover and hasp element in claims 1-8 is

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regarded as intended use. These elements are also regarded as clearly taught in the above prior art rejections of claims 1-12 and 14-16.

It is similarly not clear what is meant by claims 1 and 2 do not claim an "access door", but the claims are limited such that the cover is attached to an access door, on page 8, lines 3-8 of the Remarks. It is submitted that support on page 7, lines 11-16 of the written specification does not set forth the scope of a claim.

In response to the remarks in the first full paragraph of page 8 with respect to the Plifka and Hoffman references, it is resubmitted that a door is not being positively claimed in claims 1 and 2, as confirmed by applicant.

In response to applicant's argument throughout the remarks that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to the remarks on page 8, the last two full paragraphs, it is noted that the secondary references to Plifka and Knaack et al, relied on as secondary references in the above rejections and teaching a hasp and a notch, have not been addressed.

In response to the remarks on page 9, the first full paragraph, the Garner reference (which teaches a cover on an access door) has been applied in the above rejections with White as the primary reference.

The remarks on page 9, the last line and page 10, lines 1-12 are vague as to which claims are being argued, and it is noted that claims 1-8 do not even positively claim a hasp. Accordingly, whether such hasp includes a hole or a notch is of no patentable significance. Further, it is resubmitted that the Plifka reference teaches the claimed notch usable on a hasp element.

The request for assistance/suggestions on page 12 of the REMARKS is noted. The examiner is currently not aware of any patentable suggestions to offer.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lloyd A. Gall whose telephone number is 571-272-7056. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lloyd A. Gall/
Primary Examiner, Art Unit 3673

/L. A. G./
Primary Examiner, Art Unit 3673
February 21, 2010